

Remarks/Arguments

Prior to the entry of the present Amendment, claims 16-24, 30 and 34-41 were pending in this application, and were examined to the extent that they read on SEQ ID NOs: 2, 18 and 34. All claims were objected to and/or rejected on various grounds.

Claim Objections

Claim 20 was objected to for inconsistent numbering of the steps recited in the claim. Claim 20 has been currently canceled, which moots its rejection.

Claims 30 and 34-41 were objected to because claims 30, 34 and 35 contained non-elected invention, and claims 36-41 were dependent from a claim containing non-elected sequences. The amendment of claim 30, cancellation of claims 34-39, and the amendment of the dependency of claim 40 are believed to overcome this rejection.

Claim Rejections - 35 USC § 112, first paragraph

Claim 19 was rejected under 35 U.S.C. § 112, first paragraph as allegedly containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the art that the inventors, at the time the application was filed, had possession of the claimed invention. The Examiner specifically pointed to the recitation of CHEPO fragments which provide a binding site for an anti-CHEPO antibody, stating that in the absence of a structure/function relationship and the lack of representative examples and teachings for fragments which bind to anti-CHEPO antibody, applicants failed to sufficiently describe this aspect of the invention.

The rejection is moot in view of the cancellation of claim 19.

Claim Rejections - 35 USC § 112, second paragraph

1. Claims 16-24, 30 and 34-41 were rejected under 35 U.S.C. § 112, second paragraph as allegedly being indefinite.

a) In particular, Claims 16-24, 30 and 34-41 were held indefinite because of the use of the term "CHEPO." The Claims 17-21 have been canceled. Claim 16 has been

amended to include the full name of chimpanzee erythropoietin and a reference to the appropriate SEQ ID NOs, which should overcome this rejection.

b) Claims 16, 17 and 21 were held indefinite in their recitation of the term "at least about." Claims 17 and 21 have been canceled. Claim 16 as amended no longer contains the phrase objected to. Accordingly, the reconsideration and withdrawal of the present rejection would be in order.

c) Claim 18 was held indefinite in its reference to "scoring at least 80% positives when compared to the sequence. . . ." The rejection is moot in view of the cancellation of claim 18.

d) Claims 34 and 35 were rejected as being indefinite as to the recitation of X in the sequence. Claims 34 and 35 have been canceled. Claim 16, as amended, recited SEQ ID NOs 2, 18, and 34. SEQ ID NOs 18 and 34 are clear in that Xaa within the sequence stands for an unknown amino acid, therefore, the present rejection should be withdrawn.

Claim Rejections - 35 USC § 102

1. Claims 16, 20 and 21 were rejected under 35 U.S.C. § 102(b) as "anticipated" by Elliott et al. (WO 95/05465), which discloses human EPO having 99.3% sequence homology with SEQ ID NO: 2. Claims 20 and 21 have been canceled. Claim 16 has been amended to recite polypeptides comprising specific amino acid sequences, without the recitation of any sequence identity. Accordingly, the invention as defined in claim 16 is clearly distinguished over Elliott et al.

2. Claim 22 was rejected under 35 U.S.C. § 103(a) [sic] as "anticipated" by Hyttinen et al. (U.S. Patent No. 5,959,171). In view of the reference to anticipation, it is assumed that the Examiner intended to make this rejection under 35 U.S.C. § 102(a). Claim 22 has been made dependent from claim 16 which, in turn, recites polypeptides comprising specific amino acid sequences, without the recitation of sequence identity. Accordingly, claim 22 is not anticipated by Hyttinen et al.


All amendments to the claims were made without prejudice, and without acquiescence in any of the rejections, or the reasoning underlying any of the rejections. Applicants specifically reserve the right to pursue any deleted subject matter in one or more continuing applications.

All claims pending in this application are believed to be in prima facie condition for allowance, and an early action to that effect is respectfully solicited.

Please any additional fees, including any additional fees for extension of time, or credit overpayment to Deposit Account No. 08-1641 (Attorney Docket No.: 39766-0057CP2). Please direct any calls in connection with this application to the undersigned at the number provided below.

Respectfully submitted,

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